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April 25, 2014

Re: *NCUA v. Morgan Stanley & Co.*, No. 13-cv-6705
NCUA v. Wachovia Capital Markets LLC, No. 13-cv-6719
NCUA v. Goldman, Sachs & Co., No. 13-cv-6721
NCUA v. RBS Securities, LLC, No. 13-cv-6726
NCUA v. Barclays Capital Inc., No. 13-cv-6727
NCUA v. UBS Securities, LLC, No. 13-cv-6731
NCUA v. Credit Suisse Securities (USA) LLC, No. 13-cv-6736

The Honorable Denise L. Cote
United States District Court for the Southern District of New York
Daniel Patrick Moynihan U.S. Courthouse
500 Pearl Street
New York, NY 10007

Dear Judge Cote:

I write on behalf of all Defendants in response to the Motion *In Limine* to Admit Expert Statistical Sampling Testimony (the "Sampling Motion") filed by NCUA on April 4, 2014 with respect to the Expert Report of Charles D. Cowan, Ph.D. Regarding the Selection of Statistically Reliable Samples of Mortgage Loans (the "Report").

This Court has already addressed the admissibility of a similar expert report in an order dated December 3, 2012 in *Federal Housing Financial Agency, et al. v. JP Morgan Chase & Co., et al.*, and related cases (the "FHFA Order"). See Opinion & Order, *Fed. Housing Fin. Agency v. JPMorgan Chase & Co., et al.*, No. 11 Civ. 6188 (Dec. 3, 2012). For the reasons advanced by defendants in the FHFA litigation, Defendants dispute the admissibility of the Report and oppose the Sampling Motion. However, in light of the FHFA Order, and in the interest of efficiency and avoidance of rebriefing of issues already decided by this Court, Defendants limit their opposition to this letter, incorporating by reference the arguments advanced by the defendants in the FHFA litigation, and would request that any order granting the Sampling Motion expressly preserve Defendants' appeal rights and the following potential future arguments or objections to be advanced by Defendants at later stages of the litigation: (i) any arguments relating to the weight of Plaintiff's proof, (ii) any *Daubert* challenge to the admissibility of the Report based on arguments that could not reasonably have been made as of the date the Report was filed, (iii) any *Daubert* challenge to the admissibility of any future expert testimony offered by Plaintiff, and (iv) any argument preserved in the FHFA Order.

Defendants sought to preserve these arguments by stipulation with NCUA and avoid the need to file this letter-opposition with the Court. NCUA would not agree to the proposed stipulation.

A proposed order granting the Sampling Motion subject to the reservation of these rights is being submitted concurrently to the Orders and Judgments Clerk.

Very truly yours,

/s/ James P. Rouhandeh

James P. Rouhandeh

Cc: Counsel of Record (via ECF)

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